

### REMARKS

The above amendments and following remarks are submitted in response to the official action of the Examiner mailed March 28, 2005. This amendment is deemed to fully respond to all objections and rejections of the Examiner. Thus, claims 1-25, being all pending claims, are now expected to be in condition for allowance. Entry of this amendment and reconsideration to that end is respectfully requested.

In his Response to Applicants' previous Arguments, the Examiner states:

As to the priority date of the prior art "Cellular Multiprocessing Architecture", White paper from Unisys which has a copyright date of 1999 and the press release of Unisys dated May 13, 1998 which announces an expected date of product release of the Unisys CMP system sometime during 1999. The Examiner relies on May 3, 1998 of the press release in order to determine the priority date of the "Cellular Multiprocessing Architecture", White paper from Unisys (copyright date of 1999) and use the content/specification of the "Cellular Multiprocessing Architecture", White paper from Unisys to support the rejection. (Emphasis added)

This paragraph, to the extent understood, appears to be contrary to controlling law. The first apparent sentence is really a "sentence fragment" having no predicate. Furthermore, it appears that the Examiner utilizes the term, "priority date", when he really means the "effective date" of a reference. In addition, a cursory review of the file indicates that the two documents to which the Examiner refers may not have been properly made of record.

Far more significant, however, is the highlighted statement through which the Examiner appears to imply that because the press release may have an effective date of May 13, 1998, the White Paper must also have an effective date of May 13, 1998. To the extent that this is the position of the Examiner, it is incorrect as a matter of law.

It is axiomatic that a given reference has an effective date to establish when the contents of that given reference has become part of the prior art. As a result, if May 13, 1998 is the effective date of the press release, it is only the contents of the press release which entered the prior art on May 13, 1998. Similarly, the contents of the White Paper entered the prior art upon its own effective date, which on its face may be substantially more than a year later.

The specific text of the press release further establishes that the White Paper could not have had an effective date of May 13, 1998, because the information which the White Paper now contains was not in existence at the time of the press release. The press release states in part that the CMP is "a server now under development". The CMP was not designed yet on May 13, 1998. Therefore, the details of its design could not have been entered into the prior art, because they did not exist. Furthermore, even if the design did exist on May 13, 1998, it

could not have been entered into the prior art, because the press release does not contain that information.

It is and has been Applicants' position that the White Paper is not prior art to Applicants' pending claims. However, unless and until the Examiner establishes a *prima facie* effective date for the White Paper which comports with controlling law, Applicants need not and indeed cannot produce any evidence in rebuttal thereof.

Claims 1, 4-7, 9-13, 15-19, and 21-24 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,928,327, issued to Wang et al (hereinafter referred to as "Wang"). This ground of rejection is respectfully traversed as to the amended claims for the reasons provided below.

As has been previously explained and is highlighted throughout the specification and drawings, it is critical to Applicants' invention to employ an overall video on demand system architecture which promotes efficiency and modularity. Efficiency is greatly enhanced by handling the input/output intensive video streaming function with one or more relatively simply video processors having a first hardware and software architecture, and assigning the remainder of the data processing functions to a relatively versatile and complex large scale computer having a different, second hardware and software architecture. Modularity is enhanced by this approach, because

the additional input/output intensive video streams arising from an increased subscriber base are easily accommodated through the addition of more video processors. The load on the transaction processor, on the other hand, will be most easily increased by additional functionality, which is accommodated in a normal data processing approach by adding memory, instruction processors, and application software.

During operation, the video processor limits its activity to streaming video from a temporary memory to the subscribers. All other functions are performed by the transaction processor, including spooling requested video programs into the temporary memory. Thus, as the number of subscribers increases, the number of video processors can be easily increased. On the other hand, as the available on demand functions increase (e.g., larger video library, added gaming features, etc.), the multi-processor transaction server is increased in capacity by adding standard multi-processor system resources.

In rejecting claim 1, the finds that Fig. 1A element 110 (i.e., central control module) corresponds to the claimed "first processor" and Fig. 1A element 120 (i.e., distribution module) corresponds to the claimed "second processor". Wang is readily distinguishable over claim 1 because elements 110 and 120 employ the same processors. Column 4, lines 41-42, states:

....CPU 112 (preferably a PENTIUM microprocessor manufactured by the Intel Corporation).

Similarly, column 5, lines 1-21, states:

CPU 125 is preferably a PENTIUM processor manufactured by the Intel Corporation.

Thus, Wang cannot have the modularity and efficiency of the claimed invention as taught throughout Applicants' specification, because it utilizes the very same processor for both applications.

The efficiency of the Wang approach is further limited by the need of central control module 110 to both load and unload video programming into memory buffer 114. This is readily apparent, because memory buffer 114 and CPU 112 are components of the same motherboard which is central control module 110 (see column 6, lines 38-48). Wang describes the unloading operation at column 7, lines 11-12, states:

....allows CCM 110 to write data to DM 120 as if CCM 110 were writing to a conventional disk drive...

In other words, in the claimed invention, the first processor writes (i.e., spools) into the video memory and the second processor reads (i.e., streams) from the video memory. This directly promotes efficiency of operation.

For these reasons, claim 1 is readily distinguishable from Wang. Therefore, the rejection of claim 1, and all claims depending therefrom, is respectfully traversed.

Claim 4 depends from claim 1 and further limits the claimed first processor to a "transaction server" coupled to a

"subscribing receiver". Wang has no "subscribing receiver". Therefore, Wang cannot meet this limitation. The Examiner has clearly erroneously equated client 101 of Wang to the claimed "subscribing receiver". This finding is clearly erroneous in view of the description of client 101 by Wang at column 6, lines 1-3, which states:

Each video client 101 is a computer which generates video control signals.

According to Wang, client 101 is a generator of "video control signals" and not a "receiver" as claimed. The rejection of claim 4 is respectfully traversed.

Claim 5 depends from claim 4 and further limits the format of the requested video program. Wang cannot meet the limitations of the claims from which claim 5 depends as explained above. Therefore, Wang cannot meet the further limitations of claim 5. Thus, the rejection of claim 5 is respectfully traversed.

Claim 6 is an independent apparatus having four basic elements. In clearly erroneously finding the first element, "two subscribing television receivers", the Examiner cites Fig. 1A, element 150, containing a number of client 101 instances. Quite apart from being the claimed element, as explained above, these are taught by Wang to be computers which generate video control signals (see column 6, lines 1-3). The remaining limitations are also not found, as explained above. Unlike the claimed invention, elements 110 and 120 have identical hardware and

software architectures. Similarly, as explained above, in the Wang system, memories 114 and 130 are both loaded and unloaded by central control module 110. The rejection of claim 6, and all claims depending therefrom, is respectfully traversed.

Claim 7 depends from claim 6 and further limits the claimed video processor. For the reasons stated above, Wang does not have the claimed video processor. Therefore, Wang cannot have these further limitations. The rejection of claim 7 is respectfully traversed.

Claim 9 depends from claim 8 and further limits the format of the video program. At page 10, paragraph 2, the Examiner admits that Wang does not meet the limitations of claim 8. Therefore, claim 9 which depends from claim 8 cannot possibly be anticipated by Wang as admitted by the Examiner. The rejection of claim 9 is respectfully traversed.

Claim 10 depends from claim 6 and further limits the claimed transaction server. For the reasons stated above, Wang does not have the claimed transaction server. Therefore, Wang cannot have these further limitations. The rejection of claim 10 is respectfully traversed.

Claim 11 is an independent apparatus claim having means-plus-function limitations. For the reasons discussed above, Wang does not have the claimed "transaction processing means" or the "video processing means". Therefore, the rejection of claim 11,

as amended and all claims depending therefrom, is respectfully traversed.

Claim 12 depends from claim 11 and further limits the "requesting means" to a "subscriber box". In making his rejection, the Examiner inconsistently states:

Claim 12, wherein the 1<sup>st</sup> requesting means further comprises a subscriber box (Fig. 1A, el. 101 is a computer box).

This statement is inconsistent, because it correctly states that element 101 "a computer box". However, Applicants' do not claim a "a computer box". They claim a "subscriber box". Clearly, the Examiner's finding is legally irrelevant, because it does not address the claimed invention. The rejection of claim 12 is respectfully traversed.

Claim 13 depends from claim 12 and further limits the claimed video processing means. For the reasons stated above, Wang does not have the claimed video processing means. Therefore, Wang cannot have these further limitations. The rejection of claim 13 is respectfully traversed.

Claim 15 depends from claim 11 and further limits the claimed transaction processing means. For the reasons stated above, Wang does not have the claimed transaction processing means. Therefore, Wang cannot have these further limitations. The rejection of claim 15 is respectfully traversed.



Claim 16 is an independent method claim having five basic steps. Wang does not meet elements c, d, or e, (i.e., "spooling" and two "streaming" steps), because Wang does not have the two different architectures for the transaction and video processors and because Wang does not stream directly from memory as claimed. The rejection of claim 16, as amended and all claims depending therefrom, is respectfully traversed.

Claim 17 depends from claim 16 and further limits the two streaming steps. Wang cannot meet this limitation because it has no provision determining whether to service two non-coincident requests from a single stream or from two streams. The rejection of claim 17 is respectfully traversed.

Claim 18 depends from claim 17 and further defines the criterion for determining whether to generate one or two streams. Notwithstanding the Examiner's irrelevant statements, Wang has no provision for this functionality. The rejection of claim 18 is respectfully traversed.

Claim 21 is an independent apparatus claim. In making his rejection, the Examiner states:

Claim 21, is analyzed with respect to claim 11. Claim 11 is an independent apparatus claim having means-plus-function limitations. As such, it must be examined in accordance with MPEP 2181 et seq. Claim 21 does not have means-plus-function limitations. Therefore, claim 21 is not to be examined

in accordance with MPEP 2181 et seq as a matter of law. The rejection of claim 21 is respectfully traversed as improperly examined.

Claims 22 and 23 each depend from claim 21. Claim 22 further limits the first architecture and claim 23 further limits the second architecture. As explained above, Wang employs the identical architectures for both CCM 110 and DM 120. Therefore, the Examiner's statements in rejecting claims 22 and 23 cannot both be true. Clearly this has not occurred to the Examiner. The rejection of claims 22 and 23 are respectfully traversed.

Claim 24 depends from claim 21 and further limits the memory. For the reasons stated above, Wang does not have the claimed memory. Therefore, Wang cannot have these further limitations. The rejection of claim 24 is respectfully traversed.

Claims 2-3, 8, 14, and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Unisys Cellular Multiprocessing Architecture White Paper (hereinafter referred to as "White Paper") pages 1-8. This ground of rejection is respectfully traversed because White Paper is not prior art. Furthermore, as explained above, the Examiner has not made a *prima facie* showing of the effective date of White Paper. To the extent that he has found the effective date of White Paper to be May 13, 1998, he has done so in opposition to controlling law.

The rejection of claims 2-3, 9, 14, and 25 is respectfully traversed as not based upon prior art.

Claim 20 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of U.S. Patent No. 6,201,536, issued to Hendricks et al (hereinafter referred to as "Hendricks"). This ground of rejection is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness as specified by MPEP 2143.

Wang makes no mention of charging a subscriber for a requested program. Therefore, there can be no motivation to have facilities for performing subscriber accounting as claimed. Furthermore, the Examiner has not even attempted to meet his burden of showing reasonable likelihood of success. Finally, because claim 20 depends from claim 17 and the alleged combination cannot meet the limitations of claim 17, the alleged combination does not have all of the limitations of claim 20. The rejection of claim 20 is respectfully traversed for failure of the Examiner to make any of the three required showings for a *prima facie* case of obviousness. The rejection of claim 20 is respectfully traversed.

Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-25, being the only pending claims.

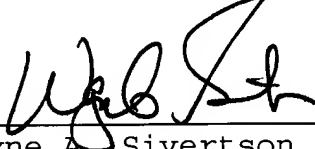
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Respectfully submitted,

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By their attorney,

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